

THE GOVERNOR'S REGULATORY REVIEW COUNCIL

Annual Report

Under A.R.S. § 41-1051(F)

G. Alex Turner, Chair
Jeanne M. Hann, Administrator
July 31, 2003

THE GOVERNOR'S REGULATORY REVIEW COUNCIL

July 1, 2002 through June 30, 2003

The purpose of the Governor's Regulatory Review Council (Council) is to review and approve or return rules; preambles; and economic, small business, and consumer impact statements prepared by state agencies under grants of rulemaking authority from the Arizona Legislature. The standards that the Council uses to decide whether to approve or return an agency's rule-related materials are at A.R.S. § 41-1052(C) through (E).

COUNCIL RESPONSIBILITIES

Under the Administrative Procedure Act, the Council is required to:

1. Review and approve or return, in whole or in part, a rule, preamble, and economic, small business, and consumer impact statement submitted by an agency (A.R.S. § 41-1052(B));
2. Schedule a periodic review of each agency's rules and approve or return, in whole or in part, the agency's report on its review (A.R.S. § 41-1056(B));
3. Receive reports of compliance with time-frame rules from agencies that issue licenses and report results to the governor, president of the senate, and speaker of the house of representatives (A.R.S. § 41-1078);
4. Receive and hear appeals regarding an agency's practice or substantive policy statement (A.R.S. § 41-1033(B));
5. Receive and hear appeals regarding the economic, small business, and consumer impact statement of an agency's rules (A.R.S. § 41-1056.01(D));
6. Receive and hear appeals regarding an agency delegation agreement (A.R.S. § 41-1081);
7. Receive certifications of compliance with A.R.S. § 41-1091 from all agency heads (A.R.S. 41-1091(D)); and
8. Receive reports from agencies regarding their progress toward completing the courses of action established in their five-year-review reports (A.R.S. § 41-1056(H)).

COUNCIL ACTIVITIES

1. Review and Act upon Submitted Rules

A.R.S. § 41-1052 requires an agency to submit and obtain Council's approval of a rule package, which consists of a rule, preamble, and economic, small business, and consumer impact statement, before the rule package is filed with the Secretary of State. In 2002-2003, 39 different agencies submitted 117 rule packages for review and action by the Council. In these packages, the agencies repealed 264 rules, made 320 new rules, amended 472 existing rules, and renumbered 42 existing rules for a total of 1098 different rulemaking actions. The Council approved 1086 of the rules (99%) on first hearing. The Council tabled and later approved 4 rules and tabled 6 rules that were later withdrawn by the agency¹. The Council returned no rules this year. In accordance with A.R.S. § 41-1051(F), a list of agency rules approved by Council under A.R.S. § 41-1052 during this year is appended to this report.

2. Schedule and Act upon Five-year-review Reports

A.R.S. § 41-1056 requires each agency to review all of its rules at least once every five years to determine whether any rule should be amended or repealed and to summarize its findings in a report to Council. During this year, 20 different agencies submitted and received Council's approval of 45 five-year-review reports. The reports summarized reviews of 1046 rules. The agencies determined that 674 (64%) of these rules need to be repealed or amended and provided the Council with a schedule of when the planned rulemakings will be completed. A list of agency five-year-review reports approved by Council this year under A.R.S. § 41-1056 is appended to this report.²

3. Receive Reports on Progress toward Completing the Courses of Action Established in Five-year-review Reports

A.R.S. § 41-1056(H) requires agencies to report on their progress toward completing the courses of action established in their five-year-review reports. Of the 58 agencies required to submit a progress report this year³, 37 (64%) reported lack of progress toward completing one or

¹ The agencies involved in these two actions were the Board of Chiropractic Examiners and the Board of Dental Examiners.

² Nine of the agencies that submitted a five-year-review report this year reviewed and reported on the same rules that they reviewed and reported on five years ago without completing the course of action established in the previous five-year-review report. These agencies and the rules reviewed again are as follows:

- Administration, Department of, A.A.C. Title 2, Chapter 5 (Personnel) and Chapter 10 (Risk Management)
- Agriculture, Department of, A.A.C. Title 3, Chapter 3 (Environmental Services)
- Boxing Commission, A.A.C. Title 4, Chapter 3
- Environmental Quality, Department of, A.A.C. Title 18, Chapter 5, Article 4 (Subdivisions)
- Health Services, Department of, A.A.C. Title 9, Chapter 17, Article 2 (Food Standards)
- Insurance, Department of, A.A.C. Title 20, Chapter 6, Articles 7, 8, 10, 14, and 16
- Land, Department of, A.A.C. Title 12, Chapter 5, Articles 5, 8, and 9
- Pharmacy, Board of, A.A.C. Title 4, Chapter 23, Article 5 (Drug Classification)
- Revenue, Department of, A.A.C. Title 15, Chapter 3 (Luxury Tax)

more of the courses of action established in their five-year-review reports. A list of these agencies and the rules on which they report lack of progress is appended to this report.

Four agencies (7%) failed to submit the required progress report. These agencies are:

- Boxing Commission
- Tax-deferred Annuity and Deferred Compensation Plan
- Executive Clemency, Board of
- Naturopathic Board of Medical Examiners

4. Receive Reports of Compliance with Time-frame Rules

All agencies that issue licenses are required by A.R.S. § 41-1073 to make rules establishing overall time frames during which the agency will decide either to grant or deny each license type. There are still some agencies that have not made the time-frame rules required by statute. These agencies are:

- Charter Schools, Board of
- Land, Department of
- Osteopathic Examiners in Medicine and Surgery, Board of
- Public Safety, Department of

In accordance with A.R.S. § 41-1078(B), on December 1, 2002, the Council submitted a report regarding agencies' compliance with their time-frame rules during the 2001-2002 fiscal year to the Governor, the President of the Senate, and the Speaker of the House of Representatives. A copy of the report and summary form are appended to this report.

5. Receive and Hear Appeals Regarding an Agency's Practice or Substantive Policy Statement, Regarding the Economic, Small Business, and Consumer Impact Statement of an Agency's Rules, or Regarding an Agency Delegation Agreement

Appeal of an Agency Delegation Agreement

During the past year, no appeal was made to Council regarding an agency delegation agreement.

Appeal of an Agency Practice or Substantive Policy Statement

A.R.S. § 41-1033(B) allows a person to appeal to Council an agency's decision not to review an existing practice or substantive policy statement that the person asserts constitutes a rule. This year, Council received and heard one appeal under A.R.S. § 41-1033. Mr. Bruce

³ An agency is required to submit a report if it reported lack of progress in last year's report or if it submitted a new five-year-review report to Council during this year.

Johnson appealed the Department of Transportation's (Department) decision to deny Mr. Johnson's request that the Department review its policy memo 02-014, dated May 2, 2002, which stated the Department's practice for implementing A.R.S. § 28-4076, Alternate methods of proof. The statute allows a person to provide proof of financial responsibility by depositing with the state treasurer a \$40,000 certificate of deposit. The Department's memo indicated that it is the Department's practice that a \$40,000 certificate of deposit provides proof of financial responsibility for only one motor vehicle.

Mr. Johnson contended that the Department's policy and resulting practice was an interpretation of A.R.S. § 28-4076, described a Department practice requirement, and was generally applicable to persons who use alternate methods for providing proof of financial responsibility. Mr. Johnson argued that this means the practice constitutes a rule as defined in the Administrative Procedure Act and should have been made using the rulemaking procedures in the APA. After a hearing, the Council agreed with Mr. Johnson that the Department's practice constituted a rule that had not been made using the procedures in the APA. As a result, the Department's practice was void.

Appeal of an Agency Economic, Small Business, and Consumer Impact Statement

During the past year, no appeal was made to Council regarding the economic, small business, and consumer impact statement of an agency's rules.

6. Receive Certifications of Compliance with the Substantive Policy Statement Directory Requirement

A.R.S. § 41-1091 requires all agencies to publish annually a directory summarizing the subject matter of all currently applicable rules and substantive policy statements. The directory, rules, substantive policy statements, and any materials incorporated by reference must be kept in one location and open to public inspection. Under A.R.S. § 41-1091(D), an agency head is required annually to certify to the Council that the agency is in compliance with this requirement.

One hundred three agencies submitted letters certifying their compliance during this year. As required by A.R.S. § 41-1051(F)(2), the 11 agencies that failed to submit the required certification are listed:

- Agricultural Best-management Practices Committee
- Boxing Commission
- Education, Board of
- Equalization, State Board of
- Executive Clemency, Board of
- Geographic and Historic Names Board
- Psychiatric Security Review Board
- Public Safety Personnel Retirement Board
- Racing, Department of
- Space Commission
- Tax-deferred Annuity and Deferred Compensation Plan

